

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DARRELL W. PATTEN,

Plaintiff,

Civil No. 06-172-AA

v.

ORDER

DIANNA GENTRY, et al.,

Defendants.

AIKEN, District Judge.

Plaintiff's Application to proceed in forma pauperis (#1) is allowed. However, for the reasons set forth below, this action is dismissed as frivolous and for failure to state a claim.

Plaintiff's 42 U.S.C. § 1983 complaint alleges that a hearing in his criminal case was inconveniently scheduled without notice. He seeks to have the case against him dismissed and 1.2 million dollars in damages against the judge in the case and "attorney" Dianna Gentry.

Judges are absolutely immune from liability for their judicial acts. Imbler v. Pachtman, 424 U.S. 409 (1976); Schucker v. Rockwood, 846 F.2d 1202 (9th Cir. 1988). Conducting a criminal hearing is "judicial conduct" for which defendant Garnet is absolutely immune from liability.

Prosecutors are also immune. Imbler v. Pachtman, supra. Accordingly, if "attorney" Dianna Gentry is a prosecutor, she is immune from liability for plaintiff's claims.

If Ms. Gentry is a private or court appointed attorney, her conduct in defending plaintiff is not "state action" or "conduct under color of state law" for purposes of liability under § 1983. See, Polk County v. Dodson, 454 U.S. 312 (1981); [court appointed attorney]; Rivera v. Green, 775 F.2d 1381 (9th Cir. 1985) [court appointed attorney]; Price v. Hawaii, 939 F.2d 702 (9th Cir. 1991) [private parties].

This action is dismissed with prejudice as frivolous and for failure to state a claim.

DATED this 15 day of February, 2006.

/s/ Ann Aiken
Ann Aiken
United States District Judge